

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN CRIMINAL
DIVISION

CRIMINAL DIVISION
DOCKET NO.: 1059-3-17 Cncr

STATE OF VERMONT

v.

Louis Fortier, Defendant

NOTICE OF DISMISSAL

NOW COMES the State of Vermont, by and through State's Attorney, Sarah F. George Esq., and pursuant to V.R.Cr.P 48(a) hereby dismisses WITHOUT PREJUDICE the Information in the above captioned case. In support of this motion, the State offers the following:

1. On March 30, 2017, Defendant was charged with one count of Murder in the First Degree, a violation of 13 V.S.A. §2301.
2. On April 13, 2017, the Court, at the request of Defense counsel, ordered the Department of Mental Health [DMH] to conduct a psychiatric examination of Defendant to determine (1) whether he was mentally competent to stand trial for the offenses, and (2) whether he was insane at the time of the offenses.
3. In a report dated April 26, 2017, Dr. Paul Cotton, a psychiatrist, noted that it seems most likely that Defendant could not work together with his attorney with a reasonable degree of rational understanding. Dr. David Rosmarin, a psychiatrist retained by Defense counsel, opined that Defendant lacked the capacities associated with judicial findings of competency to stand trial or proceed pro se. Dr. Cotton was provided with the history and medical documents that had been obtained as part of Dr. Rosmarin's evaluation. After reviewing that material, Dr. Cotton

concurred with Dr. Rosmarin's opinion and concluded that Defendant was not competent to stand trial.

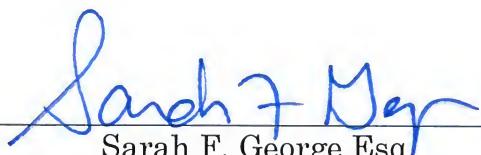
4. Based on these expert opinions, the Court found Defendant incompetent to proceed on June 26, 2017 and committed Defendant to the Commissioner of Mental Health to be hospitalized for an indeterminate period of time. The Court also requested that DMH report to the Court and the parties, every ninety days, regarding Defendant's competency.
5. On June 20, 2018, after receiving an update from the Vermont Psychiatric Care Hospital indicating that Defendant's condition has improved, the Court ordered another psychiatric examination of Defendant.
6. Dr. Cotton examined Defendant for approximately 3 hours, reviewed documentation including medical records and police records, and ultimately opined, within a reasonable degree of medical certainty, that Defendant was mentally competent to stand trial. Regarding the issue of criminal responsibility, Dr. Cotton further opined that Defendant was suffering from a mental disease, Schizophrenia, at the time of the alleged offense. Schizophrenia is a disorder of thought and a substantial disorder that affects his judgment, behavior, and ability to meet the ordinary demands of life. Dr. Cotton indicated that despite irrational thinking, Defendant likely appreciated the potential criminality of his alleged act. However, in Dr. Cotton's opinion, Defendant lacked adequate capacity to conform his conduct to the requirements of the law at the time of the alleged offense. Dr. Cotton noted that there is ample evidence to substantiate the presence of disordered thought at the time of the alleged offense that would have overridden his ability to conceptualize an alternative course of action. Specifically, his degree of fear during his untreated, disordered mental state deprived Defendant of the capacity to choose an alternative course. Therefore, Dr. Cotton found that Defendant would be considered insane at the time of the alleged offense.

7. On December 20, 2018, during a competency hearing, the Court found Defendant competent to stand trial based on Dr. Cotton's report.
8. Thereafter, Defense notified the State of its intent to rely on an insanity defense at trial.
9. On January 29, 2019, at the request of the parties, Dr. Cotton authored a supplemental report, providing a more detailed analysis of Defendant's medical records, and affirming his previous opinion that Defendant was insane at the time of the alleged offense.
10. This case presents the issue of whether Defendant was criminally responsible at the time of the alleged offense. Lack of criminal responsibility is commonly referred to as legal insanity. Before such a defense is considered, the State must prove each essential element of the offense charged beyond a reasonable doubt. If the State meets this burden, it is Defendant's burden to prove by a preponderance of the evidence that he was insane at the time the crime was committed and is therefore not criminally responsible. Proof by a preponderance of the evidence means that the defense is more likely than not true. This burden of proof is less than the burden of proof beyond a reasonable doubt.
11. Consequently, in order to obtain a conviction after an initial showing by defense that Defendant was legally insane at the time of the offense, the State must rebut the issue of insanity with admissible evidence that tends to show Defendant was sane at the time of the alleged offense. The issue is then ultimately decided by a jury. However, if the State does not have sufficient evidence to rebut Defense counsel's evidence that Defendant was insane at the time of the offense, it is the State's belief that they have a prosecutorial duty not to go forward with the charge.
12. In this case, in light of the opinion of Dr. Cotton, Defendant has substantial admissible evidence to prove by a preponderance of the evidence that he was insane at the time the crime was committed and is therefore not criminally responsible. The State does not have sufficient

evidence to rebut this insanity defense. Therefore, the State cannot meet its burden of proving the Defendant is guilty beyond a reasonable doubt; rather, the evidence shows that Defendant was insane at the time of the alleged offense.

13. Further, Defendant is currently in the custody of DMH and has been since June of 2017. The Commissioner of DMH confirmed that it makes no difference to DMH, as far as treatment and discharge determinations, whether Defendant is found not guilty by reason of insanity after a trial or if the criminal charges are dismissed. It is the State's expectation that DMH will maintain custody over Defendant until the community can be assured that he is no longer a risk of harm to himself or others, and the interests of justice have been served. The State has given DMH access to all discovery materials in this case to aid them in making their determinations.

DATED: May 31, 2019.



Sarah F. George Esq.
State's Attorney

cc: Bryan Dodge, Esquire